105

Supreme Court, U.S.
FILED
08-383 JUL 7 - 2008
OFFICE OF THE CLERK
William K. Suter, Clerk

No. _____

In The
Supreme Court of the United States

MARVIN EARL THOMPSON

Petitioner,

v.

HOWARD BROTHERS INC. D/B/A
HOWARD BROTHERS RENTAL

Respondent,

On Petition for a Writ of Certiorari
To The Supreme Court of Georgia

PETITION FOR A WRIT OF CERTIORARI

MARVIN EARL THOMPSON, Pro Se
302 LANGFORD DRIVE
NORCROSS, GEORGIA 30071
(678) 755-4434

September 22, 2008

QUESTION PRESENTED

Does the Fourth Amendment require the suppression of evidence obtained incident to an arrest that is based upon probable cause, where the arrest violates a provision of state law? Does the lower court have the right to exclude any evidence by law for apparent cause or spite reason?

Does the Six Amendment articulate against overall criminal prosecutions shall be informed of the nature and cause of the accusation; to be confronted with the witnesses against him in having required process for obtaining witnesses in his favor and to have the assistance of counsel for his defense. Does the lower court have the rights to deny one of a trial by jury?

TABLE OF CONTENTS

QUESTION PRESENTED i
TABLE OF AUTHORITIES ii
INTRODUCTION 1
OPINIONS BELOW 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED 2
STATEMENT OF THE CASE 3
REASON FOR GRANTING THE PETITION 7
CONCLUSION 9

PETITION FOR A WRIT OF CERTIORARI

Marvin Earl Thompson, Pro Se, respectfully petitions this Court for a Writ of Certiorari to review the judgment of the Supreme Court of Georgia in this case.

INTRODUCTION

The Petition concerns whether the Fourth Amendment requires suppression of evidence obtained when a police officer makes an arrest based on probable cause, supported by Oath of affirmation, and the person or things to be seized. Also, the Petition concerns whether the Six Amendment was violated with bogus motions and tampered evidence to prolong or prevent a trial. This Petition presents an ideal vehicle for this court to resolve a deep and mature conflict among the lower courts concerning a recurring issue.

OPINIONS BELOW

The decision of the Supreme Court of Georgia is published as no opinion. The decision of the Court of Appeal of Georgia is published as Marvin Earl Thompson v. Howard Brothers, Inc., D/B/A Howard Brothers Rental (289 Ga. 273).

JURISDICTION

The decision of the Supreme Court of Georgia was issued on April 21, 2008.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This petition concerns the following constitutional and statutory provisions.

The Fourth Amendment of the Constitution of the United States U.S. Const Amend IV provides:

> The rights of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Six Amendment of the Constitution of the United States U.S. Const Amend VI provides:

> In all criminal prosecution, the accused shall enjoy the right to speedy and public trial, by an impartial jury of the states and district wherein the crime have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

APPENDIX

Appendix A	Decision of Superior Court of Gwinnett County State of Georgia
Appendix B	Decision of Superior Court of Gwinnett County State of Georgia
Appendix C	Decision of Superior Court of Gwinnett County State of Georgia
Appendix D	Court of Appeals of Georgia Denying Amendment
Appendix E	Court of Appeal of Georgia Denying Motion for Reconsideration
Appendix F	Supreme Court of Georgia Denying Petition for Writ of Certiorari
Appendix G	Supreme Court of Georgia Denying Motion for Reconsideration

STATEMENT OF THE CASE

On August 9, 2000 I arrived home at lunch time 12:00 p.m. with one of my employees name Michael Stanley Snow. Michael stayed in my truck while I went into my home to use the rest room. Shortly after, detectives arrived at my home five minutes later knocking at the door. Then I asked who's there. The detectives answered, the Gwinnett County Police. Detective Rivera and a black male detective were standing with a warrant in hand for my arrest. They stated they had a video tape showing me stealing a chain saw at the, Howard Brother Rental. Rivera pointed at my Ford truck and said that is the truck that was at the crime scene, but after reviewing the police report a 1978 Chevy pickup truck was at the crime scene which I was selling to Philip Bailey a co-worker. Rivera begins to search my Ford truck looking for the chain saw.

Later on, a white police officer drove up to my home joining with the two detectives in my yard. Rivera then handcuffed me and the police officer placed me in the back of the police car and drove me to the Norcross, precinct located on Jimmy Carter Blvd. The police officer, along with the two detectives, took me inside for questioning approximately thirty minutes. Rivera persistently asked, "Did you steal the chain saw?" "I answered no; I do not steal, and you have the wrong person." Then I asked if I could see the video tape, and Rivera, stated the video was at the crime lab, and he continued to persistently ask did you steal the chain saw. I continued answering, no. Out of desperation, I told Rivera that I love him. Next, the black male detective then asked me to calm down. I answered him saying, "I'm a church going man and I would never steal anything." The black male detective then asked, "What church do I attend?" I answered, "World Changer International Ministry." He said he was familiar with that church.

I began talking to Rivera, asking him to call Doug Howard, whom I knew personally. Rivera said that he would not call Doug Howard, but he would call the Howard Brother's store of crime location. The phone call took place on a speaker phone a female answered, and Rivera asks to speak to the store Manager Matthew Chambers. Chambers asked, "How may I help you?" Rivera stated, "We have Mr. Marvin Thompson in custody is he the person who stole the chain saw?" Matthew Chambers answered "Yes he is the

one," Rivera said, "thank you," and hung the phone up. Rivera ordered me to stand up and the white police in uniform handcuffed me, and escorted me out of the building and put me in the police car and drove me to the Gwinnett County Jail where I was booked and jailed. I hired attorney Scott Estees September 2000, after I was released from jail. I continued questioning Estees about reviewing the video tape. Estees responded we can watch the tape after they release it from court.

October 2000, I received a call from the owner; Doug Howard stating we made a mistake identifying you, Marvin Earl Thompson, as the perpetrator. Doug Howard also said, he spoke with his brother John Howard, and they both wanted to compensate me. I replied to Doug, because you insulted me, your brother John Howard belittled me and Mathew Chambers was acting in a disrespectful way towards me and now you all have thrown me into jail, the least I would take is three million dollars. Doug responded by saying, "We will see about that," then he hang up. I called my attorney Scott Estees and told him about the incident. Then he asked for Doug Howard, phone number. I gave him the number, after that he starting telling me to take a plea bargain. I told him no, because I did not do the crime. Then I asked him if we can see the video tape. He said, that, "the courts haven't release it yet." I stopped by unexpectedly at his office with a dismissal letter, dismissing him from my case. I handed him the letter, the first thing came out of his mouth was, "I received the video tape from the courts this week, of the Howard Brother's scene, but you can't see anything on the tape. Then he said, "Your new attorney can pick-up the tape from the court." I replied, "thank you," and walked out the office.

I was selling the 1978 Chevy pick-up truck to Phillip Bailey (my employee) he took the initiative and sold it to Larry Jones and Larry Jones brother Philip Jones went into the Howard Brother's store in the 1978 Chevy and stole the chain saw. The tag was still in my name. Brian Whiteside my new attorney told me that I needed to hire a private investigator, because I was facing ten years in prison if convicted. He gave me the number to a private investigator name (Tyrone Kershaw). I hired him and he found the perpetrator (Philip Jones) and my attorney (Brian Whiteside) presented Philip Jones to the Gwinnett County Criminal Division.

The Gwinnett County Criminal Division ordered a motion for nolle prosequi. I don't know if they arrested the guy or not, but I do know they continued to maliciously prosecute me. I was wrongfully arrested without legal of factual justification, wrongfully prosecuted even after the Defendant was told and knew I was not the perpetrator, and wrongful initiation and encouragement/continuation of the criminal prosecution (#01-B-3928-3), of me by Defendant. Even after, the Defendant was told and knew I was not the perpetrator. Alleged theft was on June 8, 2000.

I was arrested on August 9, 2000. I spent one day in jail. Also was entered a Criminal Discharge and Acquittal in March of 2004, after four long years of fighting the Defendant's lies and misrepresentations to the State. Petitioner was indicted during the August, 2000 term of the Gwinnett County for the offense of theft by taken. I pleaded not guilty to the above mentioned charge in my arraignment. On March, 2004 I was able to obtain an Acquittal and Absolute Discharge ("Acquittal") from the Superior Court of Gwinnett County. I spent over $10,000.00 defending the criminal charge and another $2,500.00 in getting said Acquittal.

On October 9, 2006 a Motion Hearing was held in the Superior Court of Gwinnett County; the judge ordered the Howard Brother's Attorney (M. Scott Barksdale) to produce Officer Rivera in court. He was never produced. In Brian Whiteside deposition he talks about how you can only see the guy back of his head in the video, but in detective Rivera sealed deposition he said you can see the guy face etc. The lower court allowed them to switch the video. A question was asked in the sealed deposition, "Did he and Howard Brother's Attorney Barksdale ever met up and talked about the case?" "He stated yes." But, on the October 9, 2006 hearing the judge orders Howard Brother's attorney Barksdale to produce Rivera he said he could not find him that's what Barksdale said in the November 21, 2006 transcript with a different judge. My case was sabotaged with the help of the lower courts, most of my attorneys, (I hired five different ones) and with the help of detective Rivera. My Attorney Ralph Villani called me on a Friday night and said he needed Stanley Snow and I to do an Affidavit, he wanted me to locate Michael Stanley Snow and meet up with him on Saturday, November 18, 2006. Michael and I met up with him

at the McDonald Restaurant on Pleasant Hill Rd in Duluth. He stated he only needed us to sign the back copies, because he wasn't finish with the Affidavits. Ralph Villani betrayed me and Michael with our signature. In the Defendant Limine Motion, Ralph Villani responded by saying, "His computer crashed," and he used those false affidavits in replace of it. But "notice," in the documented records and transcripts all of this occurred after the judge ordered Barksdale to produce detective Rivera.

On Monday, November 20, 2006 Ralph Villani called me about a Tuesday, November 21, 2006 hearing for 1:00 p.m. he stated that I did not need to be present. On November 21, 2006 a Summary Judgment Hearing with a different judge was held at the Superior Court of Gwinnett County, the judge dismissed my case. Those false affidavits and what was said in that, November 21, 2006 summary judgment hearing about me was a lie. I informed the lower court about what Ralph Villani did before the lower court order was mailed out for the Summary Judgment; and I told the court to mail the order to my address, and I asked if the lower court could get him to give me my case file. I never got any help. Then I contacted the Georgia State Bar Association, and they made him release my case file to me. I filed a Motion for Reconsideration on the Summary Judgment granted to the defendant, but the Superior Court of Gwinnett never mailed a decision letter.

First, a Motion for Reconsideration was filed January 26, 2007; Amended Notice of Appeal was filed April 3, 2007. The Court of Appeals issued an order denying the application for Amended Notice of Appeal on January 7, 2008. Second, I filed a Motion for Reconsideration with the Court of Appeals on January, 17 2008. The Court of Appeals issued an order denying the Motion for Reconsideration on January 24, 2008. Finally on February 1, 2008, I filed in the Court of Appeals a Notice of Intention to Apply for Writ of Certiorari to the Georgia Supreme Court it was also denied on April 21, 2008. After that I filed a Motion for Reconsideration it also was denied on May 27, 2008.

This maliciously prosecution case has inflicted upon me an overwhelming amount of stress and anxiety, which caused me to have an enlarged heart and high blood pressure as of it being sabotaged.

REASONS FOR GRANTING THE PETITION

The lower courts failed in acquitting me of all charges after the perpetrator was found and presented to the courts by my private investigator and my attorney Brian Whiteside during the maliciously prosecution. A judgment was entering MOTION FOR NOLLE PROSEQUI.

The lower courts have so far blundered, misunderstood, or attempted to placate the rule of law guaranteed to a person who is Pro Se. The lower courts fail to allow me to have a trial by jury of twelve. The lower courts erred by failing to limit its holding on the facts of this case to the applicable controlling authority of this court. My right to a jury trial was violated and under the United States and Georgia Constitutions this right should have been granted. The courts erred in failing to honor the Honorable Judge order on Monday, October 9, 2006. The Honorable Judge orders the Howard Brother's Attorney to produce Detective Rivera in court. To the Honorable Court rightfully states that To Prevail on Summary Judgment under, O.C.G.A.§9-11-56 CROZER V. REICHERT,.275 Ga. 118 (2002).

Because Howard Brother's has familiarity with me, and the fact that the perpetrator who was not me was captured that was on the video tape. Howard Brother's would have no ground for proceeding against me other than a desire to injure me. I explain how Howard Brother's familiarity with me in some details in my transcript from page 52 through 62. In fact, I describe in some detail numerous encounters with the same identifying witnesses. I also, described in my transcript from 48 and 49 that before I was taken to the police station, the Investigating Officer called to confirm with Howard Brother's and even at that time they reiterated that the perpetrator was me; I was infact the perpetrator. While this without more evidence is not proof of malice, it creates an issue for the jury as to whether Howard Brother's employees knew me well enough not to misidentify me as the perpetrator in the video in light of the numerous encounters and problems that I have had with them over the years.

Because the record shows that the Investigating Officer was not independently, and legally certain that I was the perpetrator, there is a question of fact regarding probable cause for the jury. It

is known fact that normally when an officer clearly identifies a suspect on video in the act of the crime, the officer would immediately arrest the suspect and take the person to jail. The officer would have no conceivable need for corroboration from witnesses like Howard Brother's.

In this case and as reflected in the transcripts of both me (48 through 50) and the officer (pages 11 through 13), the officer picked me up at my home and did not take me to jail even though the officer said that he had independently identified me as the perpetrator on the video. The officer instead takes me to the precinct and calls Howard Brother's to inquire whether they were sure that I was the perpetrator on the video. While admittedly this does not show a complete lack of probable cause in my case, it does create an issue of fact for the jury on whether the officer and Howard Brother's are being truthful regarding probable cause. For the reason stated above, I hear by respectfully move this Honorable Court to overturn the lower court's decision.

CONCLUSION

The Petition for a writ of certiorari should be GRANTED.

Respectfully submitted,

MARVIN EARL THOMPSON, Pro Se
Date: September 22, 2008

"APPENDIX A"

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEOGIA	:	
vs.	:	**Indictment**
01-B-3928-3		
MARVIN EARL THOMPSON	:	

MOTION FOR NOLLE PROSEQUI

Now comes the District Attorney of Gwinnett County and moves this Court for consent to enter a nolle prosequi in the above-styled case. In support, the District Attorney shows the Court that there is insufficient evidence of identity. This is a theft by shoplifting case in which the perpetrator ran out of the store with a chainsaw. Upon interviewing for trial the witness who identified the defendant and who knows defendant as a customer, she states that it is a "possibility" that the defendant is the one stole the chainsaw. Therefore, the state cannot prove the case beyond a reasonable doubt.

"""""s/"""""

ORDER

The above motion having been considered by this Court, it is hereby ordered that a nolle prosequi be entered in the above styled case.

SO ORDERED, this 10 day of April, 2002.

"""""s/"""""

e.g., "Appendix A"

"APPENDIX B"

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

STATE OF GEORGIA,	:	
	:	INDICTMENT NO: **01-B-3928-3**
vs.	:	
	:	Charge: Felony Theft by Shoplifting
MARVIN EARL THOMPSON,	:	**O.C.G.A. § 16-8-14**
	:	
Defendant,	:	**Former Accusation No:*01-B-1692-3***

ORDERED FOR AN ABSOLUTE DISCHARGE AND AQUITITAL

This matter having come before this Court, in part, on ***Defendant's Motions for Absolute Discharge and Acquittal Under, in Part, the United States and Georgia Constitutions,*** this Court having previously entered nolle prosequi Orders in the above matters (see, Exhibits "A" and "B" attached hereto and incorporated herein) and the State having consented to same, it is hereby

ORDERED AND ADJUDGED that Defendant is and shall be **ABSOLUTELY DISCHANRGED and ACQUITTED** of the charges against him in the above actions; it is further

ODERED AND ADJUGED that the Clerk of Court shall enter this **Absolute Discharge and Acquittal** upon the record and docket of these cases.

SO ORDERED this 8th day of March, 2004

"""""s/"""""

e.g.; "Appendix B"

"APPENDIX C"

IN THE SUPERIOR COURT OF GWINNETT COUNTY
STATE OF GEORGIA

MARVIN EARL THOMPSON,

Plaintiff,

v. | Civil Action No: 05-A-14602-6

HOWARD BROTHERS, INC., dba
HOWARD BROTHERS RENTALS,

Defendant,

ORDER GRANTING SUMMARY JUDGEMENT TO DEFENDANT

The Defendant's Motions in Limine and for Summary Judgment having been se down for hearing on November 21, 2006, and after a review of the record in the case, the briefs of the parties and oral argument, it is HEREBY ORDERED as follows:

(1) Defendant's Motion in Limine requesting that the deposition of Detective Richard Rivera taken in a previous filing of this case be used in the present case pursuant to O.C.G.A.§ 9-11-32 (a) (5) is GRANTED.

(2) The Affidavits of Plaintiff and witness Michael S. Snow filed 11/20/06 with the clerk were not served, according to the evidence, upon Defendant's counsel until the day of the hearing. Said Affidavits are therefore EXCLUDED from consideration pursuant to O.C.G.A. § 9-11-6 (d).

(3) The Motion for Summary Judgment is GRANTED.

SO ORDERED this 27 day of December, 2006

"""""s/"""""

e.g., "Appendix C"

"APPENDIX D"

SECOND DIVISION
JOHNSON, P.J.,
PHIPPS and MIKELL, JJ.

NOTICE: Motion for reconsideration must be physically received in our clerk's office with ten days of the date of decision to be deemed timely filed. (Court of Appeals Rules 4 and 37, September 5, 2002)
http://www.gaappearls.us/rules/

January 7, 2008

In the Court of Appeals of Georgia
A07A1706. THOMPSON v. HOWARD BROTHERS, INC.

Marvin Thompson filed a malicious prosecution action against Howard Brothers, Inc., alleging that it had improperly identified him as a perpetrator of the theft of a chainsaw from its hardware store. Howard Brothers moved for summary judgment, and the trial court granted the motion. Thompson appeals from the trial court's summary judgment order. Because Thompson has presented no evidence of malice of want of probable cause, we affirm the trial court's summary judgment ruling.

"To prevail at summary judgment under OCGA § -11-56, the moving party must demonstrate that there is no genuine issue of material fact and that the undisputed facts, viewed in the light most favorable to the nonmoving party, warrant judgment as a matter of law. A defendant may do this by showing the court that the documents, affidavits, depositions and other evidence in the record reveal that there is no evidence sufficient to create a jury issue on at least one essential element of plaintiff's case."[1]

---

[1] (Citations and punctuation omitted.) *Crozer v. Reichert*, 275 Ga. 118, 121 (3) (561 SE2d 120) (2002)

In the instant case, Howard Brothers supported its motion for summary judgment with affidavits, deposition testimony and other evidences establishing that a man stole a chainsaw from its hardware store and the theft was captured on a surveillance

e.g., "Appendix D"

videotape recorder. Two store employees chased after the man and saw him put the chainsaw in the back of a pickup truck and drove away. The employees got the tag number of the truck and gave the information to the police. A police investigator discovered that the tag number belong to a truck owned by Thompson. The investigator obtained a photograph of Thompson from the Department of Motor Vehicles and was further informed by store employees that they had a copy of Thompson's driver license because he had previously done business with the store. The investigator watched the surveillance videotape of the theft and, based on the photographs he had seen of Thompson, was certain that Thompson was the man depicted on the videotape. The investigator than obtained a warrant for Thompson's arrest and a grand jury eventually indicted Thompson for theft by shoplifting.

"Action for false arrest and malicious prosecution both require evidence of malice and lack of probable cause obtains a verdict. Probable cause is absent when the circumstances would satisfy a reasonable person that the accuser had no ground for proceeding except a desire to injure the accused."[2]

---

[2](Citation and punctuation omitted.) *Smith v. Trust Company Bank*, 215 Ga. App. 413, 415 (1) (450 SE2d 866) (1994).

In this appeal, Thompson has citied no evidence that Howard Brothers had no ground for proceeding other than a desire to injure him. On the contrary, the evidence shows that Howard Brothers had reasonable grounds for proceeding against Thompson since his truck was used as the thief's getaway vehicle and he was positively identified by the police investigator as the person depicted on the surveillance videotape.

Moreover, it is undisputed that Thompson was indicted by a grand jury for the theft. "Although evidence of an indictment is not conclusive, it is prima facie evidence of probable cause which shifts the burden to the plaintiff's to come forward with specific facts tending to show that probable cause did not exist for his arrest and that the charges against him were instead motivated by malice."[3] Thompson has come forward with no facts tending to show that probable cause did not exist and that the charges against him were motivated by malice.

---

[3](Citations and punctuation omitted.) Tate v. Holloway, 231 Ga. App. 831, 834 (499 SE2d 72) (1998).

Indeed, his appellate brief is deficient in that it makes no meaningful citations to the record in support of his claim of error. His sole reference to the record is to four page of the investigator's deposition which, rather than supporting his claim, show that he was indentified from the videotape as the thief. [4]

[4] "Each enumerated error shall be supported in the brief by specific reference to the record or transcript. In the absence of such reference, the Court will not search for or consider such enumeration," Court of Appeals Rule 25 (c) (3) (i).

Because Thompson has failed to provide us with any evidence sufficient to create a jury issue as to the essential elements of malice and want of probable cause, we find that the trial court correctly granted summary judgment to Howard Brothers. [5]

---

[5]See Desmond v. Troncalli Mitsubishi, 243 Ga. App. 71, 74-75 (2) (532 SE2d) 463) (2000).

"APPENDIXE"

Court of Appeals
of the State of Georgia

ATLANTA, **JANUARY 24, 2008**

The Court of Appeals passed the following order

Case No. A07A1706

MARVIN THOMPSON V. HOWARD BROTHERS, INC. D/B/A HOWARD BROTHERS RENTAL

Upon consideration of the motion for reconsideration filed in this case, it is ordered that it be hereby denied.

Court of Appeals of the State of Georgia

Clerk's Office, Atlanta, JAN 24, 2008

I certify that the above is a true extract from the minutes of the Court of Appeals, of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

Clerk.

COURT OF APPEALS OF GEORGIA
I here certify that this is a true and correct copy of portions of case A07A1706 as they appear in the original file in the Court of Appeal of Georgia.
Date: 2/7/2008
Signature: William L. Martin, III
Clerk, Court of Appeals of Georgia
WITNESS MY SIGNATURE AND SEAL OF THE COURT OF APPEALS OF GEORGIA

e.g., "Appendix E"

"APPENDIX F"

SUPREME COURT OF THE STATE OF GEORGIA
CLERK OFFICE
ALTANTA

Date: April 21, 2008

Marvin Thompson
302 Langford Drive
Norcross, GA 30071

Case No. S08C0906

MARVIN THOMPSON v. HOWARD BROTHERS, INC., d/b/a HOWARD BROTHER RENTAL

COURT OF APPEALS CASE NO. A07A1706

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.

_____

_____

_____

_____

_____

"""""s/"""""

e.g., "Appendix F"

"APPENDIX G"

SUPREME COURT OF GEORGIA

Atlanta, May 19, 2008

Case No. S08C0906

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

MARVIN THOMPSON v. HOWARD BROTHERS, INC., D/B/A HOWARD BROTHER RENTAL

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract form the minutes of the Supreme Court of Georgia.
Witness my signature and the seal of said court hereto affixed the day and year last above written.

Therese S. Barnes, Clerk

e.g., "Appendix G"